U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12011221

Date: NOV. 30, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a postdoctoral research fellow, seeks classification as an individual of extraordinary ability. See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition. The Director concluded that, although the record established that the Petitioner satisfied the initial evidentiary requirements for this classification, it did not establish, as required, that he has sustained national or international acclaim and is an individual in that small percentage at the very top of the field. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with our discussion below.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also Visinscaia v. Beers, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); Rijal v. USCIS, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is employed as a [redacted] Postdoctoral Fellow at [redacted] University where he conducts research on the synthesis of [redacted] materials for next-generation [redacted] devices. He received his doctorate degree in applied physics from [redacted] University in 2018.

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed to meet three criteria and the Director concluded that he satisfied all three, relating to judging the work of others, original contributions of major significance in his field, and authorship of scholarly articles in professional publications. See 8 C.F.R. § 204.5(h)(3)(iv), (v) and (vi).

Because the Petitioner met three of the regulatory criteria, the Director proceeded to a final merits determination. In a final merits determination, the Director must analyze all of a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also Kazarian, 596 F.3d at 1119-20.[1]

On appeal, the Petitioner contends that the Director's decision reflects that he did not consider all the evidence together in its totality in determining whether the Petitioner is eligible for the benefit sought. Specifically, the Petitioner asserts that the Director repeatedly disregarded favorable evidence of his accomplishments and did not examine each piece of evidence for its relevance, probative value and

[1] See also USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 4 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

credibility. We agree with that assertion as the final merits determination section of the decision contains few references to the submitted evidence. For example, although the Director determined that the Petitioner satisfied the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v), evidence related to the Petitioner's contributions in his field is not mentioned or weighed in the final merits discussion. This evidence included multiple expert opinion letters, evidence of awards the Petitioner won for his research, copies of research and review articles that cite his research, media coverage of his publications and other relevant documentation.

In referencing the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), the decision includes only a general reference to the Petitioner's peer review experience, noting that he did not establish that his activities in this regard exceed those of other researchers in his field. However the Director did not address the Petitioner's specific claims and evidence showing how his peer review activities compare to others in the field, both in terms of the number of journals for which he has served as a reviewer, and the total number of reviews he has conducted. The Director also emphasized that the Petitioner's peer review experience could not demonstrate "sustained acclaim" because most of his activities had taken place between 2016 and 2019. The Petitioner, as noted, is a postdoctoral fellow who completed his Ph.D. in 2018. There is no definitive timeframe on what constitutes "sustained," and a petitioner may be early in his or her career and still show sustained acclaim.[2]

Finally, in evaluating evidence of the Petitioner's scholarly articles, the Director excluded from consideration all publications except for those in which he was listed as the first author but stated no basis for doing so. The record reflects that the Petitioner submitted objective evidence relating to his publication rates and his citation history in comparison to others active during the same time period, as well as information regarding the impact factors of journals in which he was published. The Director did not discuss any of this relevant evidence but instead determined that the Petitioner's citation history did not compare favorably to that of two of the experts who had provided reference letters on his behalf, both senior professors with decades of experience. It was not appropriate for the Director to limit his final merits review of this criterion to an aggregate comparison of the Petitioner's publication record to that of his referees.

Because the Director disregarded much of the Petitioner's evidence in the final merits determination, the decision did not sufficiently address why the Petitioner has not demonstrated that he qualifies as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. An officer must fully explain the reasons for denying a visa petition in order to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. See 8 C.F.R. § 103.3(a)(1)(i); see also Matter of M-P-, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

At this time, we take no position as to the Petitioner's eligibility for the requested classification. Rather, we remand the matter for the Director to review the record in light of the decision's deficiencies as outlined above and enter a new decision. As the Director already determined that the Petitioner satisfied at least three criteria, the new decision should include an analysis of the totality of the record in evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence,

[2] USCIS Policy Memorandum PM 602-0005.1, supra at 14.

his sustained national or international acclaim and whether the record demonstrates that he is one of the small percentage at the very top of the field of endeavor. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also Kazarian, 596 F.3d at 1119-20.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.